

Message Text

PAGE 01 IAEA V 08700 01 OF 02 201216Z

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ACTION SCI-06

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R 191624Z OCT 73

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TO SECSTATE WASHDC 3561

INFO AEC GERMANTOWN

LIMITED OFFICIAL USE SECTION 1 OF 2 IAEA 8700

E.O. 11652: N/A

TAGS: PARM, IAEA, US

SUBJECT: REDRAFT OF PROPOSED US-IAEA SAFEGUARDS AGREEMENT

REF: (A) STATE 187563; (B) IAEA VIENNA 8400;
(C) IAEA VIENNA 8523

1. FOLLOWING IS PROPOSED TEXT PART 11.

2. ART 27 UNCHANGED

3. ART 28; REPLACE ENTIRE TEXT WITH FOLLOWING: "THE
OBJECTIVE OF THE SAFEGUARDS PROCEDURES SET FORTH IN THIS
PART OF THE AGREEMENT IS TO ASSURE THE IMPLEMENTATION OF
SAFEGUARDS, AS SPECIFIED IN ARTICLE 3C, BY PROCEDURES
IDENTICAL TO THOSE FOLLOWED BY THE AGENCY IN APPLYING ITS
SAFEGUARDS ON SIMILAR MATERIAL IN SIMILAR FACILITIES IN
NON-NUCLEAR WEAPON STATES UNDER AGREEMENTS PURSUANT TO
PARAGRAPH 1 OF ARTICLE 111 OF THE TREATY." COMMENT:
AGENCY NOTED IN JULY DISCUSSIONS, THAT OMISSION OF
PROVISIONS RE INTERNATIONAL TRANSFERS WOULD MAKE
FORMER FORMULATION OF OBJECTIVE (DETECTION OF DIVERSION)
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PAGE 02 IAEA V 08700 01 OF 02 201216Z

UNATTAINABLE ON FACE.

4. ARTS 29 THRU 33 UNCHANGED.

5. ARTICLE 34; REPLACE ENTIRE TEXT WITH FOLLOWING:

SUBPARA A. "THE UNITED STATES SHALL PROVIDE THE AGENCY, PURSUANT TO ARTICLE 1B, WITH AN INITIAL LIST OF ALL FACILITIES WITHIN THE UNITED STATES NOT ASSOCIATED WITH ACTIVITIES HAVING DIRECT NATIONAL SECURITY SIGNIFICANCE TO THE UNITED STATES " AND

SUBPARA B. "UPON NOTIFICATION BY THE UNITED STATES, FACILITIES SHALL BE ADDED TO OR REMOVED FROM THE LIST; PROVIDED THAT, IN THE CASE OF REMOVAL OF A FACILITY THEN CURRENTLY IDENTIFIED BY THE AGENCY PURSUANT TO ARTICLE 2B. THE PROVISIONS OF ARTICLE 14 SHALL ALSO APPLY."

6. ART 35 UNCHANGED.

7. ART 36; REPLACE ENTIRE INTRODUCTION WITH FOLLWOING:

"AT THE REQUEST OF THE UNITED STATES, THE AGENCY SHALL EXEMPT FROM SAFEGUARDS NUCLEAR MATERIAL WHICH WOULD OTHERWISE BE SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT, AS FOLLOWS:" (SUBPARAS UNCHANGED EXCEPT CHANGE REFERENCE IN SUBPARA B TO ARTICLE 12.)

8. ART 37 UNCHANGED

9. ART 38: PHRASE FOLLOWING COMMA SHOULD READ "PROVISION SHALL BE MADE FOR THE RE-APPLICATION OF SAFEGUARDS THERETO."

10. CHANGE ART 39 SUBPARA A TO READ "THE UNITED STATES AND THE AGENCY SHALL MAKE SUBSIDIARY ARRANGEMENTS WHICH SHALL (I) CONTAIN A CURRENT LISTING OF THOSE FACILITIES IDENTIFIED BY THE AGENCY PURSUANT TO ARTICLE 2 B AND THUS CONTAINING NUCLEAR MATERIAL SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT AND (II) SHALL SPECIFY, ETC"

11. ART 39 B (I) CHANGE REFERENCE TO ARTICLE 34A.

12. ART 39 B)II), CHANGED TO READ IN ENTIRETY: "THE LIMITED OFFICIAL USE
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PAGE 03 IAEA V 08700 01 OF 02 201216Z

AGENCY MAY THEREAFTER IDENTIFY FOR INCLUSION IN THE SUBSIDIARY ARRANGEMENTS LISTING ADDITIONAL FACILITIES FROM THE LIST PROVIDED IN ACCORDANCE WITH ARTICLE 34A, AS THAT LIST MAY HAVE BEEN MODIFIED IN ACCORDANCE WITH ARTICLE 34 B.

13. ART 39 B (III): CHANGE FIFTH WORD (" IDENTIFY") TO "DESIGNATE".

14. DELETE ART 39C, SINCE PROVISION APPEARS IN PROPOSED TEXT OF ARTICLE 2 C.

15. ART 39 D UNCHANGED

16. ART 40 SUBPARA A TO READ, IN ENTIRETY; "WITH RESPECT TO THOSE FACILITIES WHICH SHALL HAVE BEEN IDENTIFIED BY THE AGENCY IN ACCORDANCE WITH ARTICLE 39(B) (I), SUCH SUBSIDIARY ARRANGEMENTS SHALL ENTER INTO FORCE AT THE SAME TIME AS, OR AS SOON AS POSSIBLE AFTER, ENTRY INTO FORCE OF THIS AGREEMENT. THE UNITED STATES AND THE AGENCY SHALL MAKE EVERY EFFORT TO ACHIEVE THEIR ENTRY INTO FORCE WITHIN 90 DAYS AFTER ENTRY INTO FORCE OF THIS AGREEMENT; AN EXTENSION OF THAT PERIOD SHALL REQUIRE AGREEMENT BETWEEN THE UNITED STATES AND THE AGENCY."

17 ART 40 SUBPARA B: DELETE "AND OTHER LOCATIONS" FROM OPENING PHRASE; REPLACE PERIOD WITH SEMI-COLON; ADD PHRASE, BEGINNING "AN EXTENSION OF THAT PERIOD, ETC." AS AT END OF SUBPARA (A).

18. ADD NEW ART 40 SUBPARA C, TO READ: "UPON IDENTIFICATION OF A FACILITY BY THE AGENCY IN ACCORDANCE WITH ARTICLE 39 B)I) OR (II), THE UNITED STATES SHALL PROVIDE THE AGENCY PROMPTLY WITH THE INFORMATION REQUIRED FOR COMPLETING THE SUBSIDIARY ARRANGEMENTS."

19. MISSION APPRECIATES DILEMMA RE INCLUDING PROVISION IN ART 40 RE AGENCY'S RIGHT TO APPLY SAFEGUARDS, EVEN BEFORE SUBSIDIARY ARRANGEMENTS IN FORCE. OMISSION SUCH PROVISION, HOWEVER, WILL CERTAINLY DRAW CRITICISM FROM FRG, JAPAN, ETC., WHO WILL JUSTIFIABLY POINT OUT THAT, AT INSISTENCE OF U.S. DURING SAFEGUARDS COMMITTEE LIMITED OFFICIAL USE LIMITED OFFICIAL USE

PAGE 04 IAEA V 08700 01 OF 02 201216Z

DISCUSSIONS, THEIR INDUSTRIES WILL BE OPEN TO AGENCY INSPECTION IMMEDIATELY UPON ENTRY INTO FORCE OF AGREEMENT, NOTWITHSTANDING POSSIBLE ABSENCE OF COMPLETED SUBSIDIARY ARRANGEMENTS. DURING NEGOTIATIONS WITH AGENCY, WE HAVE STRESSED THAT U.S. EXPECTS TO BE CONSULTED BY AGENCY, ALONG WITH FRG, JAPAN, ETC., IN COURSE OF AGENCY'S CONTINUING SELECTION PROCESS, WHICH SHOULD PROVIDE SOME ADVANCE KNOWLEDGE OF SPECIFIC FACILITIES TO BE INCLUDED IN SUBSIDIARY ARRANGEMENTS. MOREOVER, CONCEPT OF SECOND CATEGORY, IN PROTOCOL, PROVIDES LOGICAL INTERMEDIATE STEP WHICH AGENCY SHOULD BE EXPECTED UTILIZE (AFTER INITIAL SELECTION) IN MOVING FACILITY FROM ELIGIBLE LIST TO SUBSIDIARY ARRANGEMENTS. WHILE FACILITY IS ON INTERMEDIATE LIST U.S. COULD (AND IT WOULD BE PRUDENT TO DO SO) WORK OUT INSPECTION PROCEDURES WITH AGENCY, LOOKING TOWARD TIME WHEN FACILITY IS SELECTED FOR FIRST CATEGORY. ON BALANCE, THEREFORE, MISSION RECOMMENDS INCLUSION OF ADDITIONAL SUBPARA IN ART 40, AS SUBPARA D, TO READ "UPON THE ENTRY INTO FORCE OF THIS AGREEMENT, THE AGENCY SHALL HAVE THE RIGHT TO APPLY THE

PROCEDURE LAID DOWN THEREIN IN RESPECT OF THE NUCLEAR MATERIAL LISTED IN THE INVENTORY PROVIDED IN ARTICLE 41 EVEN IF THE SUBSIDIARY ARRANGEMENTS HAVE NOT YET ENTERED INTO FORCE."

20. ASSUMING ACCEPTANCE FOREGOING RECOMMENDATION, RE-LETTER FORMER ART 40 SUBPARA C TO SUBPARA E AND CHANGE TO READ "INsofar AS THE SUBSIDIARY ARRANGEMENTS ARE APPLICABLE TO FACILITIES WHICH HAVE BEEN DESIGNATED BY THE AGENCY FOR REMOVAL FROM THE LISTING, PURSUANT TO ARTICLE 39 B(III), THEY SHALL CEASE TO BE IN FORCE FOR PURPOSES OF THE APPLICATION OF SAFEGUARDS UNDER THIS AGREEMENT UPON SUCH DESIGNATION TO THE UNITED STATES."

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PAGE 01 IAEA V 08700 02 OF 02 201240Z

14

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INFO OCT-01 IO-14 ISO-00 AF-10 ARA-16 EA-11 EUR-25 NEA-10

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LIMITED OFFICIAL USE SECTION 2 OF 2 IAEA 8700

COMMENT: DURING SEPTEMBER DISCUSSIONS, AGENCY SUGGESTED THAT PROTOCOL SHOULD PROVIDE FOR KEEPING RELEVANT PORTION OF FACILITY ATTACHMENT ACTIVE IN CASE WHERE FACILITY REVERTS FROM LISTING IN SUBSIDIARY ARRANGEMENTS TO LISTING FOR PROVISIONAL (PROTOCOL) FACILITY ATTACHMENT. WE WILL PROPOSE APPROPRIATE PROVISION THAT PURPOSE IN REDRAFT OF PROTOCOL.

21. ART 41: CHANGE REFERENCE , IN SECOND LINE FROM "ARTICLE 62" TO "ARTICLE 62(A)"; IN FIFTH LINE, AFTER "SUBSEQUENT REPORTS", INSERT FOLLOWING: "CONCERNING THOSE FACILITIES, THE INITIAL REPORTS REFERRED TO IN ARTICLE 62(B), SUBSEQUENT REPORTS CONCERNING THE FACILITIES LISTED PURSUANT TO ARTICLE 39 B (II),".

22. ARTICLE 42: REPLACE, IN ENTIRETY, WITH FOLLOWING:

"PURSUANT TO ARTICLE 8, DESIGN INFORMATION IN RESPECT OF FACILITIES IDENTIFIED BY THE AGENCY IN ACCORDANCE WITH ARTICLE 39 (I) OR (II) SHALL BE PROVIDED TO THE AGENCY DURING THE DISCUSSION OF THE RELEVANT SUBSIDIARY ARRANGEMENTS. THE TIME LIMITS FOR THE PROVISION OF DESIGN INFORMATION IN RESPECT OF A NEWLY CONSTRUCTED FACILITY WHICH LIMITED OFFICIAL USE
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PAGE 02 IAEA V 08700 02 OF 02 201240Z

IS IDENTIFIED BY THE AGENCY IN ACCORDANCE WITH ARTICLE 39 B(I) OR (II) SHALL BE SPECIFIED IN THE RELEVANT SUBSIDIARY ARRANGEMENTS AND SUCH INFORMATION SHALL BE PROVIDED AS EARLY AS POSSIBLE BEFORE NUCLEAR MATERIAL IS INTRODUCED INTO THAT FACILITY." COMMENT: QUESTION OF WHETHER OR NOT "NEWLY CONTRUCTED" FACILITIES SHOULD BE INCLUDED BY U.S. IN ELIGIBLE LIST, PRIOR TO INTRODUCTION OF NUCLEAR MATERIAL, NOT RPT NOT INTENDED TO BE PREJUDGED BY FOREGOING PROVISION. IF ANSWER NEGATIVE, PROVISION WOULD SIMPLY NOT OPERATE, BUT U.S. INTENTIONS WOULD ONLY BECOME PUBLIC THROUGH ELIGIBLE LIST AND SUBSEQUENT MODIFICATIONS. OMISSION OF STANDARD PROVISION WOULD, ON OTHER HAND, PROVOKE IMMEDIATE QUESTIONS BY FRG, JAPAN, ETC. RE U.S. INTENTIONS RE SUCH FACILITIES.

22. ARTICLE 43: CHANGE INTRODUCTION TO READ, "THE DESIGN INFORMATION TO BE PROVIDED TO THE AGENCY SHALL INCLUDE, IN RESPECT OF EACH FACILITY IDENTIFIED BY THE AGENCY IN ACCORDANCE WITH ARTICLE 39 B(I) OR (II), WHEN APPLICABLE."

23. ARTICLE 44: CHANGE FIRST SENTENCE, UP TO COMMA IN THIRD LINE, TO READ, "OTHER INFORMATION RELEVANT TO THE APPLICATION OF SAFEGUARDS SHALL ALSO BE PROVIDED TO THE AGENCY IN RESPECT OF EACH FACILITY IDENTIFIED BY THE AGENCY IN ACCORDANCE WITH ARTICLE 39 B(I) OR (II)".

24. ARTICLES 45 THRU 48: NO CHANGE.

25. DELETE ARTICLES 49 AND 50, SINCE, IN ACCORDANCE WITH ARTICLE 3B. IF MATERIAL IS USED OUTSIDE FACILITIES, IT IS NOT RPT NOT SUBJECT TO SAFEGUARDS UNDER AGREEMENT. ALL SUCCEEDING ARTICLES WOULD ACCORDINGLY REQUIRE RENUMBERING IN FINAL TEXT. FOR EASE IN COMMUNICATION CONCERNING DRAFT, HOWEVER, SUCH RENUMBERING HAS NOT RPT NOT YET BEEN APPLIED IN COMMENTS WHICH FOLLOW. MOREOVER, IN ORDER TO PRESERVE SAME NUMBERING IN SUCCEEDING ARTICLES AS THEY APPEAR IN INFCIRC/153 AND IN ALL NPT AGREEMENTS, CONSIDERATION MIGHT BE GIVEN TO "FILLING UP" ARTICLES 49 AND 50 WITH DIFFERENCE PROVISIONS, WHICH MIGHT OTHER-
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PAGE 03 IAEA V 08700 02 OF 02 201240Z

WISE APPEAR IN PROTOCOL.

26. ARTICLES 51 THRU 54: WE RECOMMEND REMAIN UNCHANGED. WE NOTE AGENCY'S OBSERVATIONS THAT REFERENCES BACK TO EARLIER ARTICLES DO NOT APPEAR NECESSARY. IN LIGHT OF PROTOCOL, HOWEVER, WHICH CALLS FOR RECORDS TO BE KEPT ON OTHER FACILITIES, NOT SUBJECT TO SAFEGUARDS, AND IN LIGHT OF ARTICLE 72 PROVISION FOR ROUTING INSPECTIONS TO ASSURE CONSISTENCY OF REPORTS WITH RECORDS, WE BELIEVE IT IS ESSENTIAL TO MAINTAIN CLEAR DISTINCTION BETWEEN RECORDS AND REPORTS CONNECTED WITH FACILITIES IN SUBSIDIARY ARRANGEMENTS, ON ONE HAND, AND THOSE CONNECTED WITH FACILITIES HAVING PROVISIONS (PROTOCOL) FACILITY ATTACHMENTS WHICH WOULD NOT BE OPEN TO INSPECTION, ON OTHER.

27 ARTICLE 55 UNCHANGED.

28. ARTICLES 56 THRU 58 UNCHANGED. SEE COMMENT PARA 26 ABOVE.

29. ARTICLES 59 THRU 61 UNCHANGED.

30. ARTICLE 62. CHANGE SO THAT ORIGINAL TWO SENTENCES BECOME SUBPARA (A) WITH TEXT MODIFIED BY DELETION "NUCLEAR " BEFORE "FACILITY" IN SECOND LINE; CHANGE REFERENCE IN FOURTH LINE TO "ARTICLE 39 B (I) OR (II)". AND REPLACE "THE FIRST " AT BEGINNING SECOND SENTENCE WITH, "WITH RESPECT TO THOSE FACILITIES LISTED PURSUANT TO ARTICLE 39 B(I),". ADD NEW SUBPARA (B) READING, "WITH RESPECT TO EACH FACILITY LISTED PURSUANT TO ARTICLE 39B (II), AN INITIAL REPORT SHALL BE DISPATCHED TO THE AGENCY WITHIN THIRTY DAYS OF THE LAST DAY OF THE CALENDAR MONTH IN WHICH THE AGENCY IDENTIFIES THE FACILITY TO THE UNITED STATES AND SHALL REFLECT THE SITUATION AS OF THE LAST DAY OF THAT MONTH."

31. ARTICLES 63 AND 64 UNCHANGED. SEE COMMENT PARA 26 ABOVE.

32. ARTICLES 65 AND 66 UNCHANGED.
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PAGE 04 IAEA V 08700 02 OF 02 201240Z

33. ARTICLES 67 AND 68 UNCHANGED. SEE COMMENT PARA 26 ABOVE.

34. ARTICLE 69. CHANGE "THIS AGREEMENT" IN THIRD LINE TO "ARTICLES 59 THROUGH 68," PER PARA 26 ABOVE.

35. ARTICLE 70 UNCHANGED.

36. ARTICLE 71: CHANGE SUBPARA (A) TO READ "VERIFY THE INFORMATION CONTAINED IN THE INITIAL REPORTS SUBMITTED IN ACCORDANCE WITH ARTICLE 62; AND". CHANGE SUBPARA (B) TO READ "IDENTIFY AND VERIFY CHANGES IN THE SITUATION WHICH HAVE OCCURED SINCE THE DATE OF THE RELEVANT INITIAL REPORT."

37. ARTICLES 72 AND 73 UNCHANGED. SEE COMMENT PARA 26 ABOVE.

38. ARTICLES 74 AND 75 UNCHANGED.

39. ARTICLE 76 UNCHANGED. WE CONSIDER ADDITIONAL PHRASE NOTED BY AGENCY DESIRABLE FOR PRECISION.

40. ARTICLES 77 AND 78 UNCHANGED.

41. ARTICLE 79. DELETE "AND MATERIAL BALANCE AREAS" IN SECOND LINE. REFERENCE BACK TO ARTICLE 39 DESIRABLE ON BASIS SIMILAR TO COMMENT PARA 26 ABOVE.

42. ARTICLES 80 AND 81 UNCHANGED. SEE COMMENT PARA 41 ABOVE.

43. ARTICLE 82 UNCHANGED.

44. ARTICLE 82; DELETE "OR MATERIAL BALANCE AREAS OUTSIDE FACILITIES;". SEE COMMENT PARA 41 ABOVE.

45 ARTICLE 84: INSERT "THE PROVISIONS OF" AFTER FIRST WORD.

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PAGE 05 IAEA V 08700 02 OF 02 201240Z

46. ARTICLES 85 THRU 89 UNCHANGED.

47. ARTICLE 90 UNCHANGED. SEE COMMENT PARA 41 ABOVE.

48. ARTICLE 98, SUBPARA J, IN SUB-SUBPARAS A(I) AND B(I) DELETE "DOMESTIC".
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